

documents supplied for use in satisfying the specified government contract (No. W911 QY-07-D-0003) are shipped to a different warehouse location from the garments that are used for purposes other than satisfying the specified contract. *See* Tab 2 to Reply Memorandum in Support of Motion for Partial Summary Judgment; Coyne Depo. Tr. 21 (9)-22 (7). Accordingly, these products can be differentiated.

12. Disputed for the same reason as Proposed Additional Material Fact No. 11, above, and incorporated herein by reference.

13. Disputed to the extent that Nextec's Proposed Additional Material Fact No. 13 suggests that fabrics manufactured to the so-called Gen III specifications using fabrics supplied by Brookwood are offered for commercial sale by ADS on its website. To the contrary, ADS has established procedures to prevent the sale of garments manufactured using Brookwood fabrics on its commercial website. *See* Tab 2, Coyne Depo. Tr. 21 (9)-22 (17); 24 (9)-25 (9); and 32 (2-15); *see also* Coyne Affid. ¶¶ 12 and 16.

14. Disputed to the extent that Nextec's Proposed Additional Material Fact No. 14 suggests that garments meeting the so-called Gen III specifications manufactured with Brookwood fabric were not delivered to and accepted by the U.S. government, when the evidence actually demonstrates that substantially all of the fabrics manufactured by Brookwood to the relevant specifications were utilized in garments that were shipped in furtherance of the specific government contract and were accepted by the U.S. government. *Id.*; *see also* Tab 2, Coyne Depo. Tr. 19 (23)-20 (10); 27 (14)-28 (5).

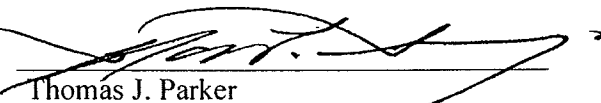
15. Disputed to the extent that Nextec's Proposed Additional Material Fact No. 15 suggests that Brookwood's discussions with garment manufacturers could not result in binding obligations restricting the use of the fabrics purchased by Brookwood's

customers, particularly in light of the contents of the additional commercial documents related to those orders. *See* Exhibit 2 to LeGrand Declaration submitted by Plaintiff; Montie Depo. Tr. 81 (2)-82 (1).

16. Disputed in that the Federal government has accepted all liability for infringement of the Nextec article claims under FAR 52.227-1(a)(1) pursuant to the relevant contract provisions. *See* Montie Declaration filed in Support of the Motion, ¶ 5 and Exh. A thereto. The exhibits referenced by Nextec in Paragraph 16 have no bearing on the scope of liability accepted by the government under the express terms of the relevant contract. *Id.*

17. Disputed to the extent that Nextec's Proposed Additional Material Fact No. 17 does not relate to the products at issue in Brookwood's present Motion and is, therefore, irrelevant to the issues raised by the present Motion. *Id.*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of **DEFENDANT'S REPLY TO PLAINTIFF'S RULE 56.1 COUNTERSTATEMENT** was served on the plaintiff by depositing a copy thereof in the United States mail, post prepaid addressed to the following:

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This 2nd day of September, 2008.



By Counsel